

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA	§	
	§	
VS.	§	NO. 3-01-CR-0246-P(01)
	§	NO. 3-05-CV-0271-P
ELIZABETH P. JOHNSTON	§	
	§	
Defendant.	§	

**FINDINGS AND RECOMMENDATION OF THE
UNITED STATES MAGISTRATE JUDGE**

Defendant Elizabeth P. Johnston, appearing *pro se*, has filed a notice of appeal of the May 27, 2005 judgment denying her section 2255 motion. Defendant also seeks leave to proceed *in forma pauperis* on appeal. The court notes that defendant's notice of appeal was not filed until December 19, 2006--more than 19 months after the judgment was entered. Defendant's appeal is therefore untimely. *See* Fed. R. App. P. 4(a)(1)(A) (notice of appeal must be filed within 30 days after judgment is entered). Because defendant can no longer appeal the denial of her section 2255 motion, her motion for leave to proceed *in forma pauperis* on appeal [Doc. #373] should be denied.

A copy of this report and recommendation shall be served on all parties in the manner provided by law. Any party may file written objections to the recommendation within 10 days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b). The failure to file written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996).

DATED: December 22, 2006.



JEFF KAPLAN
UNITED STATES MAGISTRATE JUDGE